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U.S. Citizenship
and Immigration
Services



FILE:



Office: SAN FRANCISCO, CALIFORNIA

Date: APR 08 2004

IN RE:

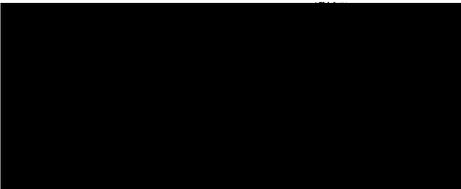
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the Director and the AAO will be affirmed.

The record reflects that the applicant is a native and citizen of the Philippines. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a nonimmigrant visa and admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative as the spouse of a U.S. citizen. He now seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may remain in the United States and reside with his U.S. citizen spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See District Director Decision* dated August 17, 2001. The decision was affirmed by the AAO on appeal. *See AAO Decision*, dated July 19, 2002.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General (now the Secretary of Homeland Security, [Secretary]) may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

After reviewing the amendments to the Act regarding fraud and misrepresentation and after noting the increased impediments Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar, eliminating alien parents of U.S. citizens and resident aliens as applicants and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

To recapitulate, the record clearly reflects and the applicant admitted under oath that he presented a passport with an incorrect date of birth in order to obtain a nonimmigrant visa for the United States. He then used that document to procure admission into the United States on February 26, 1995. The applicant remained longer than authorized and married his spouse on January 16, 2000.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In the motion to reconsider, counsel asserts that the AAO decision was an abuse of discretion, and inconsistent with the facts of the case and information presented. Counsel states that the new information presented in this case is the birth of the applicant's child. In his brief counsel asserts that a separation between the applicant and his child will cause severe psychological, mental, emotional trauma and extreme hardship which may have unforeseen consequences in the future.

As stated above, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act, is dependent first upon a showing that the bar imposes an extreme hardship to the qualifying family member, citizen or lawfully resident spouse or parent of such alien. Congress specifically did not mention extreme hardship to a U.S. citizen or resident child. Counsel's assertions regarding the hardship the applicant's child would suffer will thus not be considered. Furthermore counsel asserts that the applicant's income can be combined with the sponsor's income for the purpose of meeting the sponsorship requirement. To support his assertion counsel submits a memo from Acting Associate Commissioner, Office of Programs, dated March 7, 2000.

The AAO finds that while counsel is correct that the alien's income can be included, the assertion of financial hardship to the applicant's spouse (Ms [REDACTED]) is contradicted by the fact that Ms [REDACTED] is employed with an annual income of approximately \$31,000, a salary above the poverty guidelines for a family of two. No evidence has been provided to substantiate that her husband's financial contribution is critical to her lifestyle or well being.

Counsel did not provide any new evidence or documentation regarding the extreme hardship that would be imposed upon the applicant's spouse. Counsel reiterates the economic hardship Mr. Malonzo would suffer and restates her family ties in the United States, in an effort to show that she will suffer extreme hardship if the applicant's waiver application is denied.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The issues in this matter were thoroughly discussed by the district director and the AAO in their prior decisions. A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were removed from the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior AAO's decision dismissing the appeal will be affirmed.

ORDER: The order of July 19, 2002, dismissing the appeal is affirmed.